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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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JOSEPH CASTELLANO,

Plaintiff,

v.

BRIGHAM YOUNG UNIVERSITY, SCOTT  
ELKINS, Managing Director of HR, and  
DAVID TUELLER,

Defendants.

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING COMPLAINT WITH  
PREJUDICE**

Case No. 2:16-CV-01205

District Judge Jill N. Parrish

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Defendants moved to dismiss the Amended Complaint on January 11, 2018 (ECF No. 29). Plaintiff responded on February 12, 2018 (ECF No. 30), and Defendants filed a reply on February 22, 2018 (ECF No. 31). On August 16, 2018, Magistrate Judge Furse issued a Report and Recommendation (ECF No. 35) that Castellano's Amended Complaint be dismissed for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Judge Furse further recommended that such dismissal be granted with prejudice because any amendment would be futile.

Castellano did not file an objection to the Report and Recommendation, and therefore waived any argument that it was in error. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if "the interests of justice so dictate." *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). The court has reviewed the Report and Recommendation and concludes that it is not clearly erroneous and finds that the interests of justice do not warrant deviation from the waiver rule.

Accordingly, the court **ADOPTS** the Report and Recommendation and **GRANTS** defendants' Motion to Dismiss the Amended Complaint. The court **ORDERS** that Castellano's action be **DISMISSED WITH PREJUDICE**.

Signed September 6, 2018

BY THE COURT



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Jill N. Parrish  
United States District Court Judge